



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
On the Thirtieth day of November, 2012

Airtrade International, Inc.

**Violations of 49 U.S.C. § 41712, 14 CFR 257.5,
and Order 2011-4-21**

**Docket OST 2012-0002
Served November 30, 2012**

CONSENT ORDER

This consent order concerns Internet advertisements by Airtrade International, Inc., (“Airtrade”) that failed to disclose code-share arrangements as required by 14 CFR Part 257 and 49 U.S.C. § 41712(c). These violations also constitute violations of 49 U.S.C. § 41712(a), which prohibits unfair and deceptive practices, and Order 2011-4-21,¹ which directs Airtrade to cease and desist from violations of the Department’s code-share disclosure regulations. This order directs Airtrade to cease and desist from future violations of Part 257, section 41712, and Order 2011-4-21, and assesses Airtrade a compromise civil penalty of \$150,000.

Applicable Law

Airtrade is a ticket agent² and is therefore subject to the code-share disclosure requirements found in 49 U.S.C. § 41712(c) and Part 257. Under section 41712(c), ticket agents are required to disclose the name of the operating carrier providing the service for each segment of a passenger’s itinerary “on the first display of the Web site following a

¹ *Airtrade International, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 257, Order 2011-4-21 (April 26, 2011).*

² A “ticket agent” is “a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.” 49 U.S.C. § 40102(a)(45).

search of a requested itinerary in a format that is easily visible to a viewer.” Additionally, section 257.4 of the Department’s code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is unfair and deceptive in violation of 49 U.S.C. § 41712, unless, in conjunction with that holding out or sale, the advertiser follows certain notice requirements, including those of 14 CFR 257.5(d). The specific terms of section 257.5(d) require that print advertisements, including those published on the Internet, “prominently disclose that the advertised service may involve travel on another carrier,” “clearly indicate the nature of the service in reasonably sized type,” and “identify all potential transporting carriers... by corporate name and by any other name under which that service is held out to the public.” Failure to disclose code-share arrangements as required by Part 257 and section 41712(c) constitutes an unfair and deceptive practice and unfair method of competition in violation of section 41712(a).

Facts and Conclusions

On April 26, 2011, the Department issued Order 2011-4-21 against Airtrade. The order found that, for a period of time in 2011, Airtrade failed to comply with 14 CFR Part 257 and 49 U.S.C. § 41712(c). In addition, it directed Airtrade to cease and desist from further violations of 14 CFR Part 257 and 49 U.S.C. § 41712 and assessed Airtrade a civil penalty of \$50,000.

At the time Order 2011-4-21 was issued, Airtrade appeared to be in compliance with section 257.5 of the Department’s code-share disclosure rule and 49 U.S.C. § 41712(c). However, a follow-up investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) found that, for a period of time after April 26, 2012, Airtrade had fallen out of compliance and was once again failing to properly disclose the existence of code-sharing arrangements when advertising code-share flights operated on behalf of a major air carrier by a regional air carrier. Specifically, on two of its Internet web sites, www.vayama.com and www.budgetair.com, Airtrade did not display the corporate names of the transporting carriers and any other names under which those flights were held out to the public during the flight selection and booking process. As a result, consumers were unable to learn the identity of the airline that would actually operate the aircraft on which they would be flying.

Mitigation

In mitigation Airtrade states that the flight listings on its website that did not disclose code-share flights were due to the installation of a third-party software patch that, without Airtrade's knowledge, deleted the software that Airtrade had earlier installed to properly identify flights involving code-share segments. Airtrade states that once it received notice that it was in violation of the Department’s code-share disclosure requirements, it promptly brought its website into compliance. Airtrade states that it has taken additional measures to test that code-share disclosures are displayed for all flights on its websites, according to the information it receives from its GDS provider and/or the airlines.

Decision

The Department views compliance with Part 257, 49 U.S.C. § 41712, and Order 2011-4-21 seriously. Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. The Enforcement Office and Airtrade have reached a settlement of this matter in order to avoid litigation. Airtrade agrees to the issuance of this order and to cease and desist from similar violations of 49 U.S.C. § 41712, 14 CFR Part 257, and Order 2011-4-21 and to the assessment of \$150,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's code-share disclosure requirements.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Airtrade International, Inc., violated 14 CFR 257.5(d) and 49 U.S.C. § 41712(c) by failing to properly disclose code-sharing arrangements;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Airtrade International, Inc., engaged in an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. § 41712(a);
4. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Airtrade International, Inc., violated the cease and desist provision of Order 2011-4-21;
5. We order Airtrade International, Inc., and all other entities owned or controlled by, or under common ownership and control with Airtrade International, Inc., their successors and assignees, to cease and desist from further similar violations of 49 U.S.C. § 41712, 14 CFR 257.5, and Order 2011-4-21. Failure to comply with this cease and desist provision shall subject these entities to further enforcement action;
6. We assess Airtrade International, Inc., \$150,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4 above. Of this total penalty amount, \$75,000 shall be due and payable as follows: \$25,000 shall be due and payable within 15 days of the date of issuance of the order, and additional payments of \$25,000 each shall

be due and payable on January 1, 2013, and February 1, 2013. Any unpaid portion of the civil penalty amount shall become due and payable immediately if, within one year of the date of issuance of the order, Airtrade International, Inc., violates this order's cease and desist or payment provisions, in which case Airtrade International, Inc., may become subject to additional enforcement action for any violation of the order; and

7. We order Airtrade International, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Airtrade International, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

SAMUEL PODBERESKY

**Assistant General Counsel for
Aviation Enforcement and Proceedings**

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